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8 CES GROUP, LLC

9 **UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA**

11 **SAN JOSE DIVISION**

12 CES GROUP, LLC,

13 Plaintiff and Counterclaim-
14 Defendant,

15 vs.

16 ENERGY LABS INC., DMG CORPORATION,
and DMG NORTH, INC.,

17 Defendants and Counterclaim-
18 Plaintiffs.

Case No. 5:14-cv-02919-BLF

**CES GROUP, LLC'S NOTICE OF
MOTION AND MOTION TO
SHORTEN TIME REGARDING ITS
MOTION TO ENFORCE THE
SCHEDULING ORDER**

JURY TRIAL DEMANDED

Date: _____

Time: _____

Courtroom: 2

Judge: Hon. Howard R. Lloyd

21 **NOTICE OF MOTION AND MOTION**

22 PLEASE TAKE NOTICE that on as soon as the matter may be heard, in the above-captioned
23 Court, Plaintiff CES Group, LLC ("Plaintiff" or "CES") will and hereby does respectfully move this
24 Court pursuant to Local Rule 6-1 for an order shortening time for briefing and hearing regarding CES's
25 Motion to Enforce the Scheduling Order.

26 CES's Motion to Enforce the Scheduling Order relates to Defendants Energy Labs Inc.'s, DMG
27 Corporation's, and DMG North, Inc.'s (collectively, "Defendants") failure to serve invalidity
28 contentions by the deadline set in this Court's Scheduling Order [D.I. 53], and seeks an order requiring

1 Defendants to comply with that Order. Because of the time-sensitivity of the issue, including the fact
 2 that Defendants' continued refusal to follow the Court's Scheduling Order adversely affects significant
 3 portions of the schedule set by this Court, CES seeks an order shortening time for briefing and hearing
 4 on its Motion to Enforce the Scheduling Order.

5 This Motion is based on the accompanying Memorandum of Points and Authorities, the
 6 accompanying Declaration of Evan Budaj, the pleadings and records on file in this action, any other
 7 evidence or argument that may be presented before or at the hearing on this Motion, and all matters of
 8 which the Court may take judicial notice.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 The Court entered its Scheduling Order on December 24, 2014. [D.I. 53]. The Court's
 11 Schedule required Plaintiff's Disclosure of Asserted Claims and Infringement Contentions and
 12 accompanying document production no later than January 2, 2015. *Id.* at 1. Plaintiff served those
 13 papers on Defendants on December 23, 2014. *See* Motion to Enforce the Scheduling Order ("Motion
 14 to Enforce") at 2. Defendants take issue with the sufficiency of Plaintiff's disclosure, but that issue has
 15 not yet been decided. *See* Joint Report [D.I. 60]. The Scheduling Order required Defendants to serve
 16 their invalidity contentions and accompanying document production no later than 45 days after
 17 Plaintiff's Infringement Contentions are served. [D.I. 53] at 2. Including the extra three days given by
 18 FRCP 6(d), Defendants' invalidity contentions were due February 9, 2015. Defendants served no
 19 document even purporting to be invalidity contentions on or before that date (nor have they done so by
 20 the time of filing of this Motion). *See* Declaration of Evan Budaj ("Budaj Decl.") ¶ 5. Defendants did
 21 not receive relief from, nor secure any modification to, the Scheduling Order prior to the February 9
 22 deadline (nor has any such relief or modification been granted by the time of filing of this motion). *Id.*
 23 Indeed, Defendants did not file a motion, pursuant to Local Rule 16-2(d), requesting any such relief.
 24 *Id.*

25 At least eight dates on the Court's Scheduling Order have deadlines that depend on prior events
 26 in the case. *See* [D.I. 53] at 2. For each such deadline, Defendants' failure to serve its invalidity
 27 contentions on time will affect the eventual deadline. Budaj Decl. ¶ 4. Indeed, should Defendants
 28

1 continue this course and not serve invalidity contentions, the dates and deadlines for events on the
2 Court's calendar, such as the claim construction hearing, would be prejudiced. *Id.* Because Plaintiff
3 understands the need to maintain this Court's Scheduling Order—especially, as here, when it was
4 stipulated to by all parties—it filed its Motion to Enforce the Scheduling Order. Because each day that
5 passes without Defendants' service of invalidity contentions is one more day the schedule will be
6 undermined, and because this issue should be heard expeditiously to avoid further delay, Plaintiff
7 hereby respectfully requests that the Court grant its Motion to Shorten Time and enter the attached
8 proposed order.

9 DATED: February 19, 2015

Respectfully submitted,

WEIL, GOTSHAL & MANGES LLP

By: /s/ Jared Bobrow

Jared Bobrow

Attorneys for Plaintiff and Counterclaim-Defendant
CES GROUP, LLC